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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,208	06/19/2001	Stephane Coulombe	05245.00006	9863

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BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER
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NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/883,208

Applicant(s)

COULOMBE ET AL.

Examiner

Phuoc H. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,6,9,10,15-23,27,28,31-36,39 and 42-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 50-58 is/are allowed.
- 6) ☒ Claim(s) 1-3,6,9,10,15-23,27,28,31-36,39,42-45,48,49 and 59 is/are rejected.
- 7) ☒ Claim(s) 46 and 47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to the amendment filed on January 21, 2005. Previous office action contained claims 1-50. Applicant amended claims 1, 6, 10, 22, 35, 39, 42, 45 and 49, canceled claims 4-5, 7-8, 11-14, 24-26, 29-30, 37-38, and 40-41, added claims 51-59. Amendment filed on January 21, 2005 have been entered and made of record. Therefore, pending claims 1-3, 6, 9-10, 15-23, 27-28, 31-36, 39, and 42-59 are presented for further consideration and examination.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-3, 6, 9-10, 15-23, 27-28, 31-36, 39, and 42-59 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 6, 9-10, 15-23, 27-28, 31-36, 45, and 48, rejected under 35 U.S.C. 103(a) as being unpatentable over Yano et al. (Hereafter, Yano) U.S. Patent 6,701,372 in view of Borella U.S. Patent 6,442,603.

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5. Regarding claims 1,22,35, and 45, Yano discloses system and method to measure a perceived bit rate between a client and a server (Figures 4 and 15), the method comprising: (1) measuring a number of bits transmitted between the client and the server over a time period, wherein: the number of bits measured are included only within at least one transaction unit, and the time period is a sum of time durations of each of the at least one transaction unit (col. 3 lines 57 through col. 4 lines 3; col. 5 lines 60 through col. 5, lines 26; and col. 13, last paragraph); however, Yano fails to teach adapting, by server, a type of content to be sent to the client based on a measurement determined during act (1).

Borella teaches adapting, by server, a type of content to be sent to the client based on a bit rate measurement (Abstract; Figure 3; and col. 8 lines 15-61).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Borella's teaching into Yano's method for a server to adapt a type of content to sent to the client based on the bit rate measurement to ensure improved user perception regardless of network latency.

6. Regarding claim 2, Yano discloses the number of bits measured are included in a plurality of transaction units, and the time period is the sum of the time durations of each of the plurality of transaction units (col. 7 lines 48 through col. 8 lines 24; and col. 10, lines 34-46).

7. Regarding claims 3,23, and 36, Yano discloses act (1) is performed on the server and a respective one of the time durations is an amount of time from a beginning of a transmission, from the server, of a first response within the respective transaction unit to a time of a receipt, by the server, of a last acknowledgement within the respective transaction unit (Figures 10-11; and col. 9 lines 38-58).

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8. Regarding claim 6, Yano discloses act (2) further comprises adapting a resolution of an image to be sent to the client (col. 12 lines 26-65).
9. Regarding claims 9, and 27, Yano discloses act (1) is performed on the client and a respective one of the time durations is an amount of time from a beginning of a transmission of a first request, from the client, within the respective transaction unit to a time of a receipt, by the client, of a last response within the respective transaction unit (Figures 10-11; and col. 9 lines 28-58).
10. Regarding claims 10,28, and 48, Yano discloses (2) reporting a bit rate to the server from the client, the bit rate being based on a measurement obtained during act (1) (Figure 1; col. 3 lines 14-29).
11. Regarding claims 15-17, Yano discloses the bit rate is reported in a form of a range of bit rates, an exact bit rate, and a plurality of types, each type reflecting a relative speed of the bit rate (col. 5 last paragraph through col. 5 1<sup>st</sup> paragraph; col. 10, lines 35-61; and col. 12, lines 36-57).
12. Regarding claims 18,31, and 41, Yano discloses act (1) is performed at an application level within the client, such that a perceived bit rate is measured for a plurality of applications executing on the client (Figures 10 and 11).
13. Regarding claims 19, and 32, Yano discloses the reporting of the bit rate to the server is performed for each of the plurality of applications (Figure 1; and col. 3 lines 14-29).
14. Regarding claims 20, and 33, Yano discloses setting an amount of bandwidth desired for at least one of the applications, and reserving, by the server, the amount of bandwidth requested by the at least one of the applications (col. 3 lines 14-29).

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15. Regarding claims 21, and 34, Yano discloses detecting, by the client, when one of the applications is inactive for a specified period of time, reporting, by the client to the server, that one of the applications is inactive when the detecting determines that the one of the applications is inactive for the specified period of time, and reallocating, by the server, the amount of the bandwidth to other applications after receiving a report from the reporting (col. 11 last paragraph through col. 12 1<sup>st</sup> paragraph).

***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

17. Claims 39, 42-44, 49, and 59 are rejected under 35 U.S.C. 102(e) as being anticipated by Yano.

18. Regarding claims 49, and 59, Yano discloses a bit rate measure a number of bit rate between the apparatus and the second apparatus over a time period (col. 12, lines 36-44); a bit rate reporter to report the bit rate to the second apparatus, functioning as the server, the bit rate being based on a measurement determined by the bit rate measure, wherein: the number of bits measured are included only within at least one transaction unit, and the time period is a sum of time durations of each of the at least one transaction unit (col. 3 lines 57 through col. 4 lines 3; col. 5 lines 60 through col. 5, lines 26; col. 12 lines 45-57; col. 13, last paragraph through col. 14

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2<sup>nd</sup> paragraph), and bit rate measurer is arranged to measure the bit rate at an application level within the client, such that a perceived bit rate is measured for a plurality of applications executing on the client (col. 1 lines 5-8) (e.g. transmitting and receiving steadily generated data such as video data, audio data, and the like via a network, wherein the video and audio data are process at the applications level within the client).

19. Regarding claim 39, Yano discloses act (1) is performed on the client and a respective one of the time durations is an amount of time from a beginning of a transmission of a first request, from the client, within the respective transaction unit to a time of a receipt, by the client, of a last response within the respective transaction unit (Figures 10-11; and col. 9 lines 28-58).

20. Regarding claim 42, Yano discloses the reporting of the bit rate to the server is performed for each of the plurality of applications (Figure 1; and col. 3 lines 14-29).

21. Regarding claim 43, Yano discloses setting an amount of bandwidth desired for at least one of the applications, and reserving, by the server, the amount of bandwidth requested by the at least one of the applications (col. 3 lines 14-29).

22. Regarding claim 44, Yano discloses detecting, by the client, when one of the applications is inactive for a specified period of time, reporting, by the client to the server, that one of the applications is inactive when the detecting determines that the one of the applications is inactive for the specified period of time, and reallocating, by the server, the amount of the bandwidth to other applications after receiving a report from the reporting (col. 11 last paragraph through col. 12 1<sup>st</sup> paragraph).

*Conclusion*

23. Claims 46 and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

24. Claims 50-58 allowed.

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919. The examiner can normally be reached on Monday - Friday.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuoc H Nguyen  
Examiner  
Art Unit 2143

April 18, 2005



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SUPERVISORY PATENT EXAMINER  
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